

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

R.S.A. No. 186 of 2006.

Judgement reserved on:

Date of decision : May 1, 2006.

Rattani Devi Appellant.

Versus

Nand Lal & ors. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. G.D.Verma, Sr. Advocate with
Mr. Romesh Verma, Advocate.

For the respondents:

Surjit Singh J. (Oral).

Heard and gone through the record. Appellant- plaintiff
Rattani Devi, filed a suit against her mother-in-law, husband and
two brothers of her husband, all respondents herein, claiming that
she had become owner in possession of about 12 Bighas of land,
which was at one point of time, owned by her father-in-law
Prabhudayal.

Admitted facts are that Prabhudayal, the father-in-law of the
plaintiff, as also all his three sons, used to reside at some place

Whether reporters of local Papers may be allowed to see the judgment?

far away from the suit land. In the absence of Prabhudayal and his sons, the plaintiff being the daughter-in-law, used to manage the village property including the suit land. She claimed that from January, 1978, to the knowledge of her mother-in-law Smt. Shankari Devi, she had taken the possession of the suit land and ever since she had been in continuous, uninterrupted, open and hostile possession and her possession had ripened into ownership.

The suit was contested. It was alleged that the property had been inherited by Smt. Shankari Devi, under a will from her husband, who was the father-in-law of the plaintiff and that mutation had also been attested in her favour in the year 1999. Some preliminary objections were raised. Trial court framed issues based on the pleadings of the parties and came to the conclusion that plaintiff had not become owner of the suit land by way of adverse possession and consequently, her prayer for issuance of permanent prohibitory injunction, was dismissed. Appeal was filed by the plaintiff, which too, has been dismissed by the first appellate court. Findings and the reasoning of the trial court have been endorsed by the first appellate court.

Having heard the learned counsel for the appellant and having gone through the judgements of the two courts below, I do not find that any question of law arises in the present appeal.

Admittedly, the appellant was a family member, she being the daughter-in-law of the original owner Sh. Prabhudayal. She can legitimately be presumed to have been looking after the land, in question, on account of her relationship with the true owner and

hence her possession cannot be said to be hostile. Similarly, when Shankari Devi acquired the suit property under a will from her husband, the plaintiff being a member of the family, could not have claimed that she being in possession had become the owner.

Where a relative or a person holding the position of trustee de jure or defacto gets into possession of certain property on account of such relationship or position, the ingredients of plea of adverse possession are different from the ordinary ones. The plea of 'disclaimer' has to be specifically raised and proved. It is required to be alleged and established that at some given point of time the person, who is in possession, had disclaimed the right of owner or the person on whose behalf the property was held by the person in possession on account of family relationship or a relationship of trust. No such plea having been raised, the two courts below have rightly dismissed the plea of adverse possession.

In view of the above stated position, the appeal is dismissed.

May 1, 2006
(Hem)

(Surjit Singh),
Judge.